MT LEGISLATIVE HISTORY

Chapter 410 1981

Bill (H) 552 S_____ Original bill & hist. ___C

H. Committee on Labor and Employment		S. Committee on Labor and Employment	
Hearing Date(s) Feb 10	✓C	Hearing Date(s) Mar 10	✓C
Feb 17	✓C	Mar 17	✓C
_____	___C	Mar 19	✓C
_____	___C	_____	___C
Date Out _____	___C	_____	___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report_____

Note:

Dave Brown's testimony was presented before both committees. For the sake of economy it was only copied once.

Rep. Harper said this bill would have the most impact here in Helena. He said he has a letter on his desk from the mayor saying they are against the bill. He said counties are paid back in other ways. He said if the guard people were cutting such a fat hog you would have people breaking down the door to get in. He said they have a retention problem here in Montana. He said they really are a state militia.

Rep. O'Connell suggested asking for an appropriation to pay the $88,000. She said this would be relief for the property tax payers.

Rep. Sivertsen said he appreciated the comments made. It is a problem and sooner or later we will have to deal with this problem. He said this money does not pay for services rendered.

A roll call vote was taken and failed with 6 voting for (Keedy, Seifert, Schultz, Sivertsen, Thoft.Ellerd) nine against and two absent (Keyser and Smith). Reps. Pavlovich, Briggs and Menahan had left absentee votes with the Chairman.

Rep. Harrington moved to reverse the vote on a DO NOT PASS motion. This motion carried.

In answer to a question of having the state general fund pay for the guards' time, Rep. Sivertsen said he wouldn't go with that. He said that would involve a lot of money - a lot more than on the fiscal note as if it is done for the public employees it would have to be done for the others also, otherwise it would be discrimination.

HOUSE BILL 332 - Rep. Seifert moved DO NOT PASS. Chairman Ellerd read the letter from Mr. Palmer EXHIBIT 2 of the minutes. (Rep. Smith came) Rep. Seifert said this bill would open up a can of worms. Chairman Ellerd said we have compassion for the people not getting too much in benefits. He said he didn't realize it would involve this kind of figures.

Chairman Ellerd called for a recess of the Executive Session and opened the meeting to a hearing on the following bill.

HOUSE BILL 557 -

REPRESENTATIVE DAVE BROWN, District 83, chief sponsor, said the bill was to increase Montana's minimum wage. A copy of his testimony is EXHIBIT 3 and part of the minutes.

JERRY DRISCOLL, Billings Laborers Union Local 98, spoke in support and a copy of his testimony is EXHIBIT 4 and part of the minutes.

LINDA SKAAR, Helena Women's Political Caucus, spoke in support and a copy of her testimony is EXHIBIT 5 and part of the minutes.

PAT McKITRICK, Great Falls Teamsters No. 2, said they support the

bill. He said the basic reasons have been explained by other proponents.

RANDY SEIMERS, Operating Engineers, said his members would like to express support for this bill - while it would not affect them personally it could their wives, sons, and daughters who enter the labor market.

KATHY A. VAN HOOK, U.F.C.W., Local 1981, spoke in support. She said she has organized employees that earn less than minimum wage. She said a .30 an hour increase means a great deal to them. She said most of these people are eligible for every type of welfare and many times in desperation they have to sign up for it. This bill will enable some of these people to get off the welfare rolls.

DAVID HUNTER, Designee Commissioner of Labor and Industry, said he would like to remind the committee that one of our policies is to sustain the purchasing power for people in Montana. We will all admit purchasing power has been eroded over the past years. A minimum wage for people makes sense as it will adjust for inflation. He said it would have little effect in the employers cost for Compensation fund or the Unemployment Compensation fund.

DON JUDGE, MT State AFL-CIO, spoke next in support and a copy of his testimony is EXHIBIT 6 and part of the minutes.

JOE ROSSMEN, Butte, Teamsters, said their members are under contract and have a hard time getting by and he said it is hard to imagine what it must be like for those under or at the minimum wage.

REP. JOHN VINCENT, District 78, spoke in support. He said one of the questions the committee will have to address is one of simple elementary fairness. He said these jobs may be dreary and deadend jobs but some are also difficult jobs. People work hard and get paid little. He felt anyone working hard at any job is worth at least $2.95.

PHIL STROPE, Innkeepers Association, speaking in opposition, felt this could be a very expensive piece of legislation. He said there is a federal law that binds all properties that do over $325,000. The federal law permits them to pay the $3.35 an hour with a 40% tip credit. Montana does not have the tip credit. He said if they wanted to as a committee raise the minimum wage in Montana for the properties that do less than $325,000 annually you should say you want to raise the minimum wage in Montana to what the federal law is, they would then pay the $2.95 with no tip credit but those over $325,000 would pay the $3.35 minus the 40% tip credit. He felt the tip credit was important. He said the Montana one was jerked out all at once in 1975. He felt if the minimum wage was to be raised the tip credit should be put back in. A copy of some testimony he presented is EXHIBIT 7.

AL DONOHUE, Montana Innkeepers, and Officer of the Heritage Inn of Great Falls, said they run a union house and have for years. He said he had come prepared to look at HB 190 and HB 557 and he felt they belonged together. He said he recognizes a need for an increase in the minimum wage but this is quite a jump all at once. He referred to a summary prepared by an employee having to do with his tipped employees. He said the federal wage they are under sets the rate at $3.35 minus the 40% tip credit so they pay $2.62 and $.73 an hour is made up of tips and that is the tip money reported. He had figures which showed his waitresses with tips could make up to $10.52 an hour. He said the average restaurant man hours for tipped personnel are estimated to be 65% of all the man hours. Doing away with the tip credit will increase expenses a greal deal.

JIM DEMERS, Lewistown, Yogo Inn, said they start a waitress at $2.35 an hour. He said that same waitress will refuse a job that pays $4 an hour, as she won't take that cut in pay. He said it is all in the tip credit. He asked the committee to consider something in the tip credit line when they are setting up the wages.

CYNTHIA SMITH, Great Falls, Campground Owners, said they operate on a small profit margin. She said they can increase wages for inflation but this jump is too big. She said the morale of most of their workers is very high. She asked who this drastic increase is going to help. Not the small employer or the employee. She said they couldn't handle the greater amount.

JOHN BELGIUM, Bozeman, felt without tip credit it could become inflationary. The tipping practice part of an institution has been a reward for a good job. The tipped employees do not want to work elsewhere even if the base rate is higher because they can make more on tips.

LORINE TWEDT, Great Falls, Perks Coke and Store, said the business is down. She said their people average at least $1 an hour with tips. She felt they are happy with what they are paid. She said she can't move them from the dining room into the kitchen. She felt the tip credit has to be taken into consideration.

Questions were asked by the committee. Mr. Donohue said he didn't think the employees will make as much money if you abolish the tip credit. He said if they have a big banquet they tack on a 15% surcharge for tips.

Rep. Seifert asked if we passed HB 557 as it is written at $2.95 an hour and not have the tip credit in it would it be higher than the federal wages of $2.01 plus 40% tip credit. Rep. Keedy said that seems to be the nub of the opposition, and the best place to start. If its true that an employee who doesn't fall under the federal standards can not have her wages reduced by reference to tips, what problem was Waldron attempting to remedy.

Mr. Strope said he didn't think you could - HB 190 is saying positively what the legislature said negatively - "exclusive of gratuities" the 75 session took those words out of the law for any employer bound by size to Montana law. It says positively what was done negatively so makes it doubly clear.

Rep. Harper said the proposed minimum wage at $2.95 compared to our big brother at $3.35 less 40% tip credit - this bill covers more than we are getting the impression it covers. If the state minimum wage is higher would the federally covered also fall under it. He mentioned the Pluff case which said specifically that state law applied. Mr. McKitrick said he couldn't answer that but it is a plausible rationale.

Rep. Underdal asked does the waitress get to keep her tip. Mr. Donohue said they report up to the difference between wages paid and minimum wage but they keep it all. Rep. Harrington asked if the tip credit was counted into their cost of operation. Mrs. Smith said they would consider the whole amount - up to the minimum wage. Rep. Keedy asked Mrs. Smith what they paid. Answer was $2 and $2.25 an hour and they have been in operation for two years and they pay a bonus at the end of the season which brings it up to $2.90 an hour. She stressed again that many of their employees are returnees.

Rep. Brown closed saying this law would impart about $.40 difference. The impact is not as severe as made out. He felt tip credit is an unfair credit and not meant to help an employer out with his wages. He hoped the committee would consider a wage rate for Montana workers that would be at least poverty level for a family of four. He said this won't bring it up to poverty level.

Chairman Ellerd closed the hearing on the bill and returned the meeting to an executive session on HB 332.

EXECUTIVE SESSION

HOUSE BILL 332 CONTINUED - Rep. Schultz said he was not comfortable with the motion of DO NOT PASS. He said he was concerned about the person who is getting the $10 a month.

Rep. Keedy moved a substitute motion that the bill be amended on line 17, page 1 to simply strike line 17 through the figure "1981." He said we are more concerned about the people disabled years ago. He said the amendment he wants is the one that will bring everybody into line.

Mr. Schultz said he understood there are some people being paid by the state on a bimonthly and other people have made settlements with the state. Those who have settled up would have no further claim.

Rep. Seifert said the idea is fantastic but suggested Rep. Keedy follow through the last page of Mr. Palmer's letter. The liability will fall on the state's general fund. The disabled may be receiving social security payments, also. He felt it was opening up a can of

Ex. 4

LABORERS INTERNATIONAL UNION OF NORTH AMERICA
Local Union No. 98
6

Bill McCo
Secretary-Treas
and Business Man
345 Calhoun L
Telephone 259-4

BILLINGS, MONTANA 59101,

TESTIMONY OF JERRY DRISCOLL ON HOUSE BILL 557, HOUSE LABOR COMMITTEE, FEBRUARY 10, 1981

I am Jerry Driscoll of Billings Laborers Local 98. I am here to speak in support of House Bill 557, which will increase Montana's minimum wage.

As you know, my union members do not work for minimum wage. They will not be directly affected by this bill. But we believe that all Montanans should be concerned about those who earn minimum wage, the working poor. These people want to work and they want to provide a decent living for themselves and their families. Union members are involved in the desperate struggle to keep up with inflation. They know how deeply inflation has cut into their real wages. And they know that it is even worse for those who work for minimum wage.

Increasing the minimum wage is important for Montana's workers and for Montana's economy. It will provide those workers who are most destitute with higher earnings. It will also increase consumtion and demand, which will result in a healthier economy.

Most other Montana workers have seen an increase in their wages over the past five years, even though those increases have usually not even kept pace with inflation. Their dollars continue to be worth less and their real purchasing power has decreased. No relief is predicted in the near future, with the prices of gasoline, fuel oil and food costs expected to go even higher.

(more)

Raising Montana's minimum wage, which has not changed since 1976, from $2.00 an hour to $2.95 just gives low paid workers a little better chance to gain a barely adequate standard of living. We ask that you vote in favor of House Bill 557.

Ex. 5

STATEMENT IN SUPPORT OF HB 557

HELENA WOMEN'S POLITICAL CAUCUS

A full time worker who earns $2 an hour earns only $4160 a year.

I don't know what the official poverty level is tody but I think we would all agree that if we were to try to live on $4100 a year we would be living in poverty.

Most of the people making this wage are women. In fact, a Department of Labor study shows that in 1977 over 64% of those workers making under $5000 were women.

The old myth that women work for pin money is simply not true. Forty-three percent of working women are single, widowed, divorced or separated. Many are the sole support of their children. In fact, 1 family in 5 with children under 18 is headed by a single parent and that parent is usually the mother.

The issue of minimum wage is a crucial one to women--one that impacts women more than men.

As you deliberate on HB 557 I would ask you to remember that in practicality, when you set an hourly wage, you are s tting a women's wage.

Linda Skaar
816 N. Ewing
Helena, Montana

Ex. 7
Ex. 6

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59601
406/442-1708

Room 100 "Steamboat Block"
616 Helena Ave.

TESTIMONY OF DONALD R. JUDGE ON HOUSE BILL 557, HEARINGS OF THE HOUSE LABOR COMMITTEE, FEBRUARY 10, 1981

I am here today on behalf of the AFL-CIO to offer our support for House Bill 557. We believe that the proposed increase in Montana's minimum wage is essential to helping low-paid workers in their battle against ever-increasing inflation.

All of us suffer from the crushing effects of inflation, but minimum wage workers bear a disproportionate share of the burden. The U.S. Bureau of Labor Statistics reports that double digit inflation ran rampant throughout the economy in 1980 for the second straight year, causing workers' purchasing power to plummet 4.8%. Not since 1918-19 had inflation previously exceeded 10% for two years in a row.

The National Center for Economic Alternatives, a private research organization, said prices for the necessities -- food, housing, energy and health care -- rose at the rate of 13.8%, even faster than the 1980 12.4% overall inflation rate. The report, as noted in an Associated Press release in the Montana Standard, February 8, 1981, said the news was worse at year-end, with the rate for those four categories rising at a seasonally adjusted annual rate of 15.2%. The report estimates that the four categories make up about 60% to 70% of an average family's household budget -- a major portion that is very difficult to cut.

Montana's minimum wage has remained constant at $2.00 an hour since 1976. Workers receiving minimum wage are generally disaffiliated, low-paid workers in dead-end jobs. An increase in the minimum wage is a matter of equity for these workers and in today's market, a matter of necessity. We ask your support for House Bill 557.

Ex. 7

Form CS-34
79

NAME Phil Strope BILL No. HB 557

ADDRESS HEL DATE 3-11-81

WHOM DO YOU REPRESENT Mont Innkeepers Ass'n

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Bill should be amended to allow the same tip credit for small employers state law as large employers under federal law. As follows: ADD NEW SECTION (3) FROM FEDERAL FAIR LABOR STANDARDS ACT:

In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 40 per centum of the applicable minimum wage rate, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

[See main volume for text of (n) to (e)]

LABOR

29 § 203
Note 50

Rep. Sivertsen said he didn't make the motion with any intention of bringing it off the table. It will stay on the table.

Chairman Ellerd called for a roll call vote and it failed with 8 voting yes (Reps. Hanson, Seifert, Schultz, Sivertsen, Briggs, Smith, Underdal and Ellerd) and 9 voting no (Dozier, Harper, Harrington, Keedy, Keyser, Menahan, O'Connell, Pavolovich, Thoft). Reps. Hanson and O'Connell had left absentee ballots with the Chairman.

Chairman Ellerd then called on a roll call vote on the motion of DO NOT PASS and this carried unanimously.

Chairman Ellerd called for a short recess during which time the committee convened in Room 129 for further executive action.

HOUSE BILL 557 - Two sets of suggested amendments were passed to the committee members. One set had been presented at a former meeting by Rep. Seifert and this is EXHIBIT 26 of the minutes; and the other set was presented by Rep. Keedy and this is EXHIBIT 27 of the minutes.

Rep. Dozier moved DO PASS. Rep. Keedy then moved that his suggested amendments be adopted by the committee. He said the amendments would simply peg the minimum wage in Montana to the federal minimum wage. It would provide that the employer could use the tip credit up to the maximum amount allowed by the federal as long as she receives enough tips to equal the minimum wage. All tips received by the employee are solely hers or his to keep.

Rep. Dozier said he was opposed to the tip credit all the way.

Rep. Seifert said his only problem was to have the minimum wage fit the federal standard. Not in any other portion throughout Montana is it the same as the federal. It would be an increase of 86%.

Rep. Harrington said the bill would be worthwhile for all but the tipped employees. He told Rep. Keedy he appreciated what he was trying to do but that he had to oppose the tip credit.

Rep. Seifert asked about farm labor and Rep. Keedy said the amounts in Brown's bill are untouched by his amendments.

The question was called on Rep. Keedy's amendments and the motion failed with Rep. Dozier, Menahan, Harrington, Keedy and Pavlovich voting yes and ten voting no (Reps. O'Connell and Hanson absent).

Dozier moved to reconsider action on the last motion so the amendments could be taken individually. This motion carried with Reps. Smith, Briggs, Harper and Keyser voting no.

Rep. Schultz moved that Rep. Keedy's first amendment be not accepted. This motion carried with 9 voting yes and 6 voting no (Reps. Dozier, Harper, Menahan, Pavlovich, Keedy, Harrington) and two absent (O'Connell and Hanson).

Rep. Menahan moved the second amendment of Rep. Keedy's 2 (3)(a) and (b). This motion failed.

Rep. Dozier moved the second half of amendment 2 (3)(c) and (d) be adopted and this motion carried with Reps. Seifert, Underdal, Smith, Ellerd and Hanson (by a left vote) voting no.

Rep. Smith moved a substitute motion of DO NOT PASS. Rep. Keyser moved a motion for all motions pending to adopt Rep. Seifert's amendments omitting small (iii) and (c) on amendment 5 as these have already been adopted from Rep. Keedy's amendments.

Rep. Harrington said this would leave it the same the first year and increase it by 20¢ the second year. Then we turn around and say anyone under 16 years can't be covered by the minimum wage. Rep. Seifert said the reason I reduced it to 16 years is that the law states "under 18 years of age." Rep. Harrington said that's federal law and there is no mention of it in the state statute.

Rep. Thoft read from the codes the part that deals with farm labor and 18 year olds. Rep. Harrington said this is under the farm but not for the city. He said he would have to oppose putting a law like that on the books to cover 16 year olds in the city.

Rep. Dozier said this is age discrimination. We have put through a joint resolution to study child labor laws and then have a bill that not only encourages the use but abuse of child labor.

Rep. Keedy moved to divide the question so we can take these one at a time. The motion carried with Rep. Thoft, Ellerd, Underdal, Smith, Seifert, Pavlovich, Briggs voting no.

Rep. Harper moved to delete amendment no. 7 of Rep. Seifert's amendments. This motion carried unanimously with those present.

Rep. Pavlovich moved to delete amendment no. 6 of Rep. Seifert's amendments and this motion failed with Reps. Keyser, Seifert, Briggs, Schultz, Thoft, Underdal, Ellerd, Smith voting against the motion.

Rep. Underdal moved to adopt 1, 2, 3 and 4 of Rep. Seifert's amendments. Rep. Pavlovich moved to separate these amendments. Rep. Pavlovich's amendment failed with Reps. Briggs, Seifert, Schultz, Ellerd, Smith, Thoft, Sivertsen, Keyser and Underdal voting not. A vote was then taken on Rep. Underdal's motion to adopt the first four amendments. This motion carried with Reps. Dozier, Harper, Menahan, Pavlovich and Harrington voting no.

Rep. Seifert moved Seifert amendment no. 5. Rep. Keyser moved a substitute motion since (iii) and (c) were already accepted as they are similar to 2(c) and (d) of Keedy's amendments to adopt only 5 (3)(a) and (b)(i) and (ii). Rep. Keedy said he opposed this motion as it is putting us into the federal system.

Under the circumstances it would be inconsistent to plug into the federal system.

Rep. Sivertsen said this is simple. Let us delete Seifert amendment no. 5 and hold onto (iii) and (c) of Keedy's amendments. Rep. Harper moved a substitute motion for all motions pending to do this. This motion carried with Reps. Ellerd and Smith voting no.

Rep. Menahan said we should delete Seifert amendment no. 6 as it doesn't apply any longer. Rep. Keyser so moved and the motion carried unanimously with tnose present.

The question was called on the motion to DO PASS AS AMENDED and the motion carried with Rep. Pavlovich voting no. Rep. Hanson and Rep. O'Connell had left votes to vote for the bill.

HOUSE BILL 190 - Rep. Seifert moved DO NOT PASS. The motion carried with Reps. Pavlovich, Dozier, Menahan and Harrington voting no.

The meeting adjourned at 10:45 p.m.

Respectfully submitted,

Robert Ellerd

ROBERT ELLERD, CHAIRMAN

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Ex. 21

PROPOSED AMENDMENTS - HB 557

1. Page 1, line 14.
Strike: "$2.95"
Insert: "$2.50"

2. Page 1, line 16.
Strike: "$3.25"
Insert: "$2.75"

3. Page 2, line 11.
Strike: "$680"
Insert: "$575"

4. Page 2, line 13.
Strike: "$750"
Insert: "$635"

5. Page 2
Following: line 14
Insert: "(3)(a) An employer may apply a credit against the wages due a tipped employee by an amount not to exceed 20% of the state minimum wage, except that an employer subject to the federal fair labor standards act, 29 U.S.C. 201 through 219, may apply a credit in an amount as defined in section 203 of that act.

(b) Such a credit may not be taken by an employer against the wages due a tipped employee unless:

(i) the employee receives tips equal to or in excess of the amount of credit;

(ii) the employee has been informed by the employer of the provisions of this section; and

(iii) all tips received by such employee or deposited in or about a place of business for services rendered by the employee have been retained by the employee.

(c) No employer may require an employee to share a tip with the employer or other employees. However, nothing contained in this subsection prevents an employee from voluntarily and on an individual basis sharing his tips with other employees."

6. Amend 39-3-402, the definition section of this part to read:
"(8) "Tipped employee" means an employee engaged in an occupation in which he customarily and regularly receives tips, on a monthly basis, at an amount as defined in the federal fair labor standards act, 29 U.S.C. 203 (t), as amended."

7. Amend 39-3-406, which defines those employees excluded from the provisions of 39-3-404 and 39-3-405 (minimum wage and overtime compensation sections). Add another exclusion which reads: "(1) an employee who is under 16 years of age."

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 10, 1981

The meeting of the Labor & Employment Relations Committee was called to order by Chairman Harold Nelson on March 10, 1981, in Room 404 of the State Capitol at 1:00 p.m.

ROLL CALL: All members of the Committee were present with the exception of Senator Keating who was excused.

CONSIDERATION OF HOUSE BILL 750:

Chairman Nelson introduced Representative Darryl Meyer, sponsor of House Bill 750, to the Committee. Representative Meyer explained the bill to the Committee. This bill is an Act to require insurers to notify employers of workers' compensation benefits that are ongoing.

PROPONENTS OF HOUSE BILL 750:

Mr. Bill Palmer, assistant administrator for the Division of Workers' Compensation, stated they are in support of the bill. He stated that the bill, as it now reads, poses no administrative problem to the Division. Employers may request and receive copies of their accident experience which the Division is very willing to accommodate.

OPPONENTS OF HOUSE BILL 750: None were present at the hearing.

QUESTIONS ON HOUSE BILL 750: There were no questions from the Committee.

Chairman Nelson called the hearing closed on House Bill 750.

CONSIDERATION OF HOUSE BILL 557:

Chairman Nelson introduced Representative Dave Brown, sponsor of House Bill 557, to the Committee. Representative Brown explained the bill to the Committee. This bill is an Act to raise the state minimum wage. See Attachment #1 for Representative Brown's printed testimony.

PROPONENTS OF HOUSE BILL 557:

DON JUDGE, representing Montana State AFL-CIO, stated they are in support of HB 557. See Attachment #2 for Mr. Judge's printed testimony.

1. Page 1, lines 12 through 17.
Strike: These lines in their entirety
Insert: "The minimum wage defined in the federal Fair Labor Standards Act, 29 U.S.C.206(a)(1)."

2. Page 2.
Following: line 14
Insert: "(3)(a) An employer may apply a credit against the wages due a tipped employee by an amount not to exceed the amount as defined in the federal Fair Labor Standards Act, 29 U.S.C.203(m).
(b) Such a credit may not be taken by an employer against the wages due a tipped employee unless:
(i) the employee receives tips equal to or in excess of the amount of credit; and
(ii) the employee has been informed by the employer of the provisions of this section.
(c) All tips received by an employee or deposited in or about a place of business for services rendered by the employee are the sole property of the employee.
(d) No employer may require an employee to share a tip with the employer or other employees. However, nothing contained in this subsection prevents an employee from voluntarily and on an individual basis sharing his tips with other employees."

3. Amend 39-3-402, the definition section of this part to read:
"(8) "Tipped employee" means an employee engaged in an occupation in which he customarily and regularly receives tips, on a monthly basis, at an amount as defined in the federal Fair Labor Standards Act, 29 U.S.C. 203(t), as amended."

GENE FENDERSON, representing the Laborers' Union #254, stated they support HB 557. See Attachment #3 for Mr. Fenderson's printed testimony.

GREGG GROEPPER, representing the Department of Labor & Industry, stated that the Department supports HB 557. Mr. Groepper's comments are written on his testifying sheet which is attached.

JOE ROSSMAN of Butte, representing the Teamsters' Union, stated they support HB 557 as introduced.

PAT McKITTRICK of Great Falls, representing the Joint Council of Teamsters #2, stated he is a proponent of the bill, but an opponent of amendments to the bill as proposed by Phil Strope.

Mr. McKittrick made several points which are:

1) Under the bill an employer would not be able to pick and choose whether to comply with federal or state laws as was suggested by Mr. Strope.
2) If there is going to be a squeeze on The Bar Owner and Innkeeper Industry, this should not result in depriving staff of tips earned, rather it might be absorbed through the sale of liquor.
3) The proposed amendments are the wrong way to promote the Bar Owner and Innkeepers industry.
4) Legislation shouldn't be passed which deprives people of minimum wage.
5) The amendment #4, proposed by Mr. Strope, would result in a tip credit to employers under the federal Minimum Wage Act and a requirement that employees' minimum wage include tips.
6) Making arrangements regarding tip credits is a proper subject to be left up to a collective bargaining agreement.

OPPONENTS OF HOUSE BILL 557:

PHIL STROPE, representing the Montana Tavern Association and the Montana Innkeepers Association, stated they would like to offer amendments to HB 557. See Attachment #4 for amendments offered by Mr. Strope and see Attachment #5 for his printed testimony.

QUESTIONS ON HOUSE BILL 557:

SENATOR AKLESTAD: How do waitresses at a banquet get their tips?

MR. McKITTRICK: He doesn't see any problem with this, but if there should be a problem, they should negotiate it in a contract.

SENATOR GOODOVER: Don't most waitresses and employers have collective bargaining?

MR. McKITTRICK: Very few have collective bargaining agreements.

Committee voted unanimously, with the exception of Senator Keating who was absent, that HOUSE BILL 750 BE CONCURRED IN.

Senator Ryan agreed to carry House Bill 750 on the floor.

No action was taken on House Bill 557 at this meeting.

ADJOURN: There being no further business, the meeting adjourned at 2:10 p.m.

Harold C. Nelson

Senator Harold C. Nelson, Chairman

mln

SENATOR GOODOVER: Does this then take the place of collective bargaining?

MR. McKITTRICK: The provisions of the law would guide what is properly in a collective bargaining agreement.

SENATOR AKLESTAD: Do the Board's provisions become effective on the same date?

REPRESENTATIVE MEYER: The minimum wage provisions in the first part of the Act become effective in the second year of the biennium, July 1, 1981 to July 1 of 1982, as well as the first, according to type of wage.

SENATOR ANDERSON: What percent of the labor force works for the minimum wage?

MR. GROEPPER: He didn't recall for certain, but about 10,000 would be subject to tip credit and the presumption is that they would be working for the minimum wage.

Representative Brown made closing remarks in support of HB 557. He stated that it was hard to believe that there are objections to the bill by the major supper clubs. He asked that the Committee check out closely what is asked to be repealed in the bill by the proposed amendments. As to a banquet situation, there is an even spread of tips in any case.

SENATOR NELSON: Asked why there wasn't a differentiation in the minimum wage bill between teenagers and other workers.

REPRESENTATIVE BROWN: If there is a job that you need to hire someone for, it is meritorious that you would hire a youth and give him a chance. The youth should get paid the minimum wage for work performed equally as satisfactorily as work performed by non teenagers.

SENATOR NELSON: Teenagers work won't increase the income on the ranch enough to justify paying minimum wage.

MR. GROEPPER: There is an exclusion in the law to take care of the problem of hiring teenagers on a ranch at a lower wage.

SENATOR RYAN: Asked Mr. Judge what he thought of amendment #4.

MR. JUDGE: It is much broader than it appears to be and there is more in that amendment than has been purported.

Chairman Nelson called the hearing closed on House Bill 557.

ACTION ON HOUSE BILL 750:

Senator Ryan moved that House Bill 750 Be Concurred In. The

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date March

NAME	PRESENT	ABSENT	EXCUSE
GARY C. AKLESTAD, VICE-CH.	✓		
MIKE ANDERSON	✓		
PAT M. GOODOVER	✓		
WILLIAM HAFFERMAN	✓		
THOMAS F. KEATING			✓
BILL NORMAN	✓		
PATRICK L. RYAN	✓		
HAROLD C. NELSON, CHAIRMAN	✓		

Each day attach to minutes.

The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

Representative Dave Brown
District 83
3040 Ottawa
Butte, Montana 59701
406--792-3604

Committees:
Natural Resources,
Judiciary

MARCH 10, 1981

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE: FOR THE RECORD MY NAME IS DAVE BROWN, REPRESENTATIVE FROM DISTRICT 83 (BUTTE-SILVER BOW). I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

I HAVE INTRODUCED HOUSE BILL 557, TO INCREASE MONTANA'S MINIMUM WAGE, BECAUSE I BELIEVE THAT WORKERS SHOULD HAVE THE PROTECTION OF AN ADEQUATE, BASE WAGE. THIS CONCEPT WAS FIRST SET INTO LAW IN 1938, WHEN THE UNITED STATES CONGRESS PASSED THE FAIR LABOR STANDARDS ACT, ESTABLISHING A FEDERAL MINIMUM WAGE. THE FEDERAL MINIMUM WAGE IS NOW $3.35 AN HOUR.

AN INCREASE IN THE MINIMUM WAGE NOT ONLY PROTECTS WORKERS FROM WORKING FOR NEAR-STARVATION WAGES, IT ALSO BENEFITS THE ECONOMY. IT KEEPS THE DOLLARS MOVING IN OUR ECONOMY, BECAUSE AS PEOPLE EARN MORE MONEY, THEY BUY MORE GOODS AND SERVICES. THIS AIDS LOCAL COMMUNITIES AND MAIN STREET BUSINESSES.

MONTANA'S CURRENT MINIMUM WAGE IS $2.00 AN HOUR. IT HAS NOT BEEN RAISED SINCE 1976. ACCORDING TO THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY, IN 1976, THE AVERAGE YEARLY EARNINGS FOR A NON-FARM PRODUCTION WORKER WAS $8,904. THE YEARLY EARNINGS FOR THOSE WORKING FOR MINIMUM WAGE IN 1976, WAS $4,160, A LITTLE LESS THAN HALF

OF THE AVERAGE WORKERS' YEARLY EARNINGS. BY 1980, THE AVERAGE YEARLY WAGE FOR MONTANA'S NON-FARM PRODUCTION WORKERS WAS $11,919. BUT YEARLY EARNINGS FOR THOSE ON MINIMUM WAGE REMAINED CONSTANT AT $4,160, WHICH BY 1980 HAD DROPPED TO ABOUT ONE-THIRD OF THE AVERAGE WORKERS' YEARLY EARNINGS.

IF THE MINIMUM WAGE IS RAISED TO $2.50 AN HOUR, IN ACCORDANCE WITH HOUSE BILL 557, AS AMENDED BY THE HOUSE, THE WORKERS' YEARLY INCOME WILL BE $5,200 PER YEAR. RAISING THE MINIMUM WAGE TO $2.75 FOR THE SECOND YEAR WILL RAISE THE WORKERS' YEARLY INCOME TO $5,720. BOTH OF THESE INCOME LEVELS ARE LESS THAN HALF OF THE AVERAGE YEARLY EARNINGS IN MONTANA AND SETS AN ANNUAL WAGE LESS THAN THE PRESENTLY ESTABLISHED FEDERAL POVERTY LEVEL.

ALTHOUGH MONTANA'S MINIMUM WAGE IS LOWER THAN THE FEDERAL MINIMUM WAGE, THE COST OF LIVING IN MONTANA IS CLOSE TO THE NATIONAL AVERAGE, WITH SOME MONTANA CITIES ABOVE THE AVERAGE AND SOME SLIGHTLY BELOW. AN INDEX REPORT OF THE AMERICAN CHAMBER OF COMMERCE RESEARCHERS ASSOCIATION FOR THE SECOND QUARTER OF 1980 SHOWED, WITH THE NATIONAL AVERAGE BEING CONSIDERED AT 100, THAT BILLINGS WAS RATED AT 97.4; BOZEMAN, 101.3; GREAT FALLS, AT 92.3; HELENA, 101.2; AND KALISPELL, 103.7.

I HAVE ALSO PROPOSED AN INCREASE IN WAGES FOR AGRICULTURAL WORKERS, WHOSE PURCHASING POWER HAS ALSO BEEN BADLY ERODED BY INFLATION. HOUSE BILL 557, AS AMENDED BY THE HOUSE, PROVIDES FOR AN INCREASE IN THEIR MONTHLY WAGES FROM $460 A MONTH TO $575 A MONTH THE FIRST YEAR AND TO $635 PER MONTH THE SECOND YEAR. FORTY PERCENT OF THAT WAGE MAY BE IN THE FORM OF BOARD, LODGING OR OTHER FACILITIES.

IN DISCUSSIONS WITH FARMER AND RANCHER FRIENDS, I HAVE LEARNED THAT THIS INCREASE WILL NOT BE A PROBLEM, AS THE PROPOSED INCREASE IS STILL UNDER THE AVERAGE WAGE FOR FARM WORKERS WHICH THEY ARE CURRENTLY PAYING.

AN INCREASE IN THE MINIMUM WAGE WILL HELP THE LOW-PAID WORKER AND WILL STIMULATE THE GENERAL ECONOMY. THOSE WHO WORK FOR MINIMUM WAGE ARE AMONG THE HARDEST HIT BY THE DOUBLE-DIGIT INFLATION RAGING THROUGH OUR ECONOMY. THEY DEPEND ON LEGISLATED INCREMENTS FOR PROTECTION AGAINST INFLATION, AND THEY WILL BE SPENDING ADDITIONAL INCOME IN MONTANA. I URGE YOUR SUPPORT OF HOUSE BILL 557.

NAME: Don Judge DATE: 3/10/81

ADDRESS: P.O. Box 1176 Helena

PHONE: 442-1708

REPRESENTING WHOM? MT STATE AFL-CIO

APPEARING ON WHICH PROPOSAL: House Bill 557

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: prepared statement left with Committee

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59601
406-442-1708

Room 100 Steamboat Block
616 Helena Ave

TESTIMONY OF DONALD R. JUDGE ON HOUSE BILL 557, HEARINGS OF THE SENATE LABOR COMMITTEE, MARCH 10, 1981

I am here today on behalf of the AFL-CIO to offer our support for House Bill 557. We believe that an increase in Montana's minimum wage is essential to helping low-paid workers in their battle against ever-increasing inflation.

All of us suffer from the crushing effects of inflation, but minimum wage workers bear a disproportionate share of the burden. The U.S. Bureau of Labor Statistics reports that double digit inflation ran rampant throughout the economy in 1980 for the second straight year, causing workers' purchasing power to plummet 4.8%. Not since 1918-19 had inflation previously exceeded 10% for two years in a row.

The National Center for Economic Alternatives, a private research organization, said prices for the necessities -- food, housing, energy and health care -- rose at the rate of 13.8%, even faster than the 1980 12.4% overall inflation rate. The report, as noted in an Associated Press release in the Montana Standard, February 8, 1981, said the news was worse at year-end, with the rate for those four categories rising at a seasonally adjusted annual rate of 15.2%. The report estimates that the four categories make up about 60% to 70% of an average family's household budget -- a major portion that is very difficult to cut.

In addition to inflation, the working poor will suffer greatly from President Reagan's proposed budget cuts, an economic program which Senator Edward Kennedy has termed "a program of unfair sacrifice and unequal benefit." For instance, if people earning minimum wage were excluded from Medicaid, there is no way they could handle medical expenses for themselves or their families.

(continued)

PRINTED ON UNION MADE PAPER

If free legal services to the poor are discontinued; if food stamps and public assistance programs are drastically cut back; if extended unemployment compensation benefits, trade readjustment assistance and CETA programs are curtailed, there will be more poor, and they must be guaranteed a reasonable subsistance salary.

That is why it is essential to raise Montana's minimum wage; not just by 50 cents an hour as amendments to HB 557 propose, but back to the $2.95 originally provided for in the bill.

Montana's minimum wage has not been raised from $2.00 an hour since 1976. At that time, a worker earning minimum wage earned about half the average earnings for a non-farm production worker. An increase to $2.95 an hour would again provide that those on minimum wage earned about half those average workers' earnings, giving them about the same purchasing power they had in 1976.

Workers receiving minimum wage are generally disaffiliated, low-paid workers in dead-end jobs. Massive layoffs, an economic downturn and high unemployment will probably alter the makeup and increase the numbers of this group. An increase in the minimum wage is a matter of equity for these workers and in today's market, a matter of necessity. We ask your support for House Bill 557, and urge you to adopt the sponsor's amendments.

NAME: Eugene Fenderson DATE: 3/10/81

ADDRESS: Box 702 Helena

PHONE: 442-1441

REPRESENTING WHOM? Laborers Union 254

APPEARING ON WHICH PROPOSAL: HB 557

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Laborers' International Union of North America, AFL-CIO
Local No. 254

P. O. BOX 702
110 N. WARREN
HELENA, MT 59624
(406) 442-1441

TESTIMONY OF EUGENE FENDERSON, BUSINESS MANAGER,
ON HOUSE BILL 557,
HEARINGS OF THE SENATE LABOR COMMITTEE,
MARCH 10, 1981

I am Gene Fenderson of Helena Laborers Local 254. I am here to spe in support of House Bill 557, which will increase Montana's minimum wage.

As you know, my union members do not work for minimum wage. They will not be directly affected by this bill. But we believe that all Montanans should be concerned about those who earn minimum wage, the working poor. These people want to work and they want to provide a decent living for themselves and their families. Union members are involved in the desperate struggle to keep up with inflation. They know how deeply inflation has cut into their real wages. And they know that it is even worse for those who work for minimum wage.

Increasing the minimum wage is important for Montana's workers and for Montana's economy. It will provide those workers who are most destitute with higher earnings. It will also increase consumption and demand, which will result in a healthier economy.

Most other Montana workers have seen an increase in their wages over the past five years, even though those increases have usually not even kept pace with inflation. Their dollars continue to be worth less and their real purchasing power has decreased. No relief is predicted in the near future, with the prices of gasoline, fuel oil and food costs expected to go even higher.

(more)

THURBER'S HELENA

Raising Montana's minimum wage, which has not changed since 1976, from $2.00 an hour to $2.95 just gives low paid workers a little better chance to gain a barely adequate standard of living. We ask that you vote in favor of House Bill 557.

NAME: Gregg Groppe DATE: _____

ADDRESS: Rm 412 ESD Building

PHONE: 449-2621

REPRESENTING WHOM? DEPT. of LABOR AND INDUSTRY

APPEARING ON WHICH PROPOSAL: HB 557

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Pusant declaration of policy in 39-3-401 sections the policy of this legislation is to

1) Provide safeguards for adequate standards of living and;

2) sustain the individual's purchasing power

The minimum wage has not been increased since 1976 and since that time the cost of living as measured by the CPI has gone up 44%

Pleased with the legislative attempt to uphold the policy established in 1975

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Sue Rasmus DATE: 3/10/81

ADDRESS: 3314 Haverhill St

PHONE: 494-4446

REPRESENTING WHOM? Teamsters Union

APPEARING ON WHICH PROPOSAL: LB 547

DO YOU: SUPPORT? As introduced AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Pat McKittrick DATE: 3/10/81

ADDRESS: P.O. Box 1184, Great Falls, Mt

PHONE: 727-4041

REPRESENTING WHOM? J. C. Teamsters No 2

APPEARING ON WHICH PROPOSAL: HB 557

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: as introduced

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Pat Stroll DATE: [illegible]

ADDRESS: Helena

PHONE: 442-3572

REPRESENTING WHOM? Mt. Farm Bur. and Mt. Stockgrowers Ass.

APPEARING ON WHICH PROPOSAL: HB 557

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS:

Amendments attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Attachment #4

AMENDMENTS TO HOUSE BILL 557

1. Title, lines 11, 12 and 13.
Following: "EMPLOYEE"
Strike: the remainder of line 11 through "BASIS" on line 13.

2. Title, line 14.
Following: "MCA." on line 14.
Insert: "AND PROVIDING THAT THE PROVISIONS OF 39-3-404, MCA, AND 39-3-204, MCA, SHALL NOT APPLY TO AN EMPLOYER OR EMPLOYEE SUBJECT TO THE PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938 AS AMENDED."

3. Page 3, lines 19 through 23.
Strike: Section (b) in its entirety as set forth on lines 19 through 23.

4. Page 4, line 3.
Insert: SECTION 3. The provisions of 39-3-404, MCA, and 39-3-204, MCA, shall not apply to any employer or employee subject to the provisions of the Fair Labor Standards Act of 1938 as amended.

March 9, 1981

Senator Harold Nelson
State Capitol
Helena, MT 59620

Re: House Bill 557

Dear Senator Nelson:

On behalf of the Montana Innkeepers Association and the Montana Tavern Association, I will appear before your committee and propose amendments to House Bill 557, the Minimum Wage Bill.

House Bill 557 as it came from the House, includes not only increases to Montana's minimum wage, but also substantive provisions that were offered in House Bill 190. The original Minimum Wage Bill amended Section 39-3-404 and the original Tip Credit Bill, House Bill 190, amended Section 39-3-204. They are both included in the amended version of House Bill 557.

The amendments that my industry will recommend to your committee and the reason for the amendments are set forth as follows:

1) We recommend that paragraph (b) on page 3, lines 19 through 23, be deleted in its entirety. The industry agrees with labor that subsection (a) set forth on page 3, lines 16 through 18, should be in the law. The industry agrees that all tips received by an employee are the sole property of an employee. To my knowledge, there are no employers who are collecting employees' tips. Possibly there are some that are not known to me. Paragraph (b) goes too far because it will upset the standard and common relationship between the employees and the employer, particularly in the banquet situation. It is a normal practice in the banquet situation for the employer to charge the banquet people an additional 15% which is then divided among the employees pursuant to an agreement worked out with them. If you leave subsection (b), the employer could have no right to enter into the division of the banquet gratuities and it might give certain employees an opportunity to take all of the gratuity to the exclusion of some others.

2) The industry suggests that Section 3 be added to provide that the provisions of Montana's minimum wage shall not apply to

an employer or employee subject to the Federal Minimum Wage law. At the present time, in the State of Montana, and in all other places in the United States, an employer who does more than $$362,000.00 of gross volume per year is covered by the Federal Minimum Wage law known as the Fair Labor Standards Act of 1938. On January 1, 1982, the minimum gross volume will be $362,500.00. For years and years, employers large enough to be covered by the federal act thought they were exclusively bound by the federal act and not bound by provisions of the state act. A decision of the Montana Supreme Court in 1977, Plouffe v. Northwest Equipment Company, 174 Mont. 313, decided that the law in this state was otherwise. It held that an employee could pick and chose between the state and federal act. For example, Plouffe chose the wage under the federal act and the overtime provisions under the state act. If SB 251 is passed into law with subsection (3) as shown on page 2, lines 16 through 19, as the law of this state and the exclusive provision is not added to the law, an employee in this state who is classified as a tipped employee would be in the position of being able to chose the federal minimum wage that allows for a tip credit and then excluding the tip credit by electing the Montana law that prohibits a tip credit. The effect of that in Montana today would be to raise all tipped employees, including those under union contracts at about $2.70 an hour, to $3.35. $3.35 is the federal minimum wage rate, but it allows for a tip credit and it is for that reason that tipped employees are under union contracts in the major cities of the State of Montana at about $2.70. Kalispell is excepted. It is about $2.50.

Please consider my amendments.

Very truly yours,

PHILIP W. STROPE

ej

DATE March 10, 1981

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Opp
Jerri E. Duncan	Mont. Hardicapped Assn	HB 557		
Doris Terpin	Mont. Stockgrowers Assn & Contrys	557		
CAROL HARRISON	Mont. Real Assoc.	557		
Dick Ford	Labor Standards Div	557		
Dave Brown	Rep. - District 83 - Billsporsor	HB 557	✓	
Joe Scotto	Comm. of HE	557		

(Please leave prepared statement with Secretary)

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 17, 1981

The meeting of the Labor & Employment Relations Committee was called to order by Chairman Harold Nelson on March 17, 1981, in Room 404 of the State Capitol at 1:00 p.m.

ROLL CALL: All members of the Committee were present.

ACTION ON HOUSE BILL 430:

Senator Aklestad moved that House Bill 430 Be Concurred In. On a Roll Call Vote, the Committee voted 4-3 that HOUSE BILL 430 BE CONCURRED IN. Senator Goodover was not present for this vote. The Roll Call Vote is attached.

ACTION ON HOUSE BILL 557:

Staff Attorney, Katherine Orr, explained the amendments offered by Phil Strope to the Committee.

Senator Ryan moved that House Bill 557 Be Concurred In "as is".

There was discussion by the Committee on the "tipping of waitresses" at banquets.

Senator Keating asked about the impact of HB 557 on jobs other than waitressing which might be affected.

Ms. Orr stated that there were many other jobs which would be affected.

Senator Keating stated that this might eliminate some jobs for some people.

Senator Ryan stated that he couldn't conceive of any job being worth less than $2.75 per hour.

Senator Goodover made a substitute motion that the Committee adopt the amendments offered by Phil Strope. There was agreement that the amendments should be severed.

Senator Keating questioned the language in the amendments.

As to section 2 in the bill, Senator Goodover stated that the bill regulates private enterprise and he didn't believe this was right.

Senator Goodover further stated that we are forcing businesses to do things that may or may not be in the best interests of the business, and he does not feel a person should be told how to run his business.

Ms. Orr stated that she had talked with Mr. Strope about the amendments, and the amendments as he has written them don't exactly do what he intends them to do.

Senator Goodover asked what Mr. Strope's amendments mean in application to the bill.

Ms. Orr stated that Mr. Strope wants to exclude employers and employees who are subject to the federal Fair Labor Standards Act from coverage of the bill. He wants to remove the ability of employers, etc. to pick and choose between the federal or state act.

Senator Nelson stated that the farm workers were excluded.

Senator Anderson stated that the tips waitresses receive would be a portion of their wages.

Senator Goodover moved that Amendment #3 offered by Phil Strope Be Concurred In. The amendment is as follows:

3. Page 3, lines 19 through 23.
Strike: Section (b) in its entirety as set forth on lines 19 through 23.

The motion failed by a 4-4 vote. This Roll Call Vote is attached.

Senator Goodover then moved that the Committee delay action on HB 557 until Thursday, March 19. The Committee agreed.

ACTION ON HJR 25:

Senator Aklestad moved that HJR 25 Not Be Concurred In.

Senator Anderson made a substitute motion that the amendment offered by Representative Harper Be Concurred In.

On a voice vote, the Committee voted unanimously to Concur In the amendment offered by Representative Harper.

There was a discussion of the Child Labor Law studies.

Ms. Orr stated that a study was requested two years ago, and Representative Harper did see this study. He thought another study was needed.

Senator Anderson moved that we table any action on HJR 25 until the next meeting. The Committee agreed to this.

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date Mar.

NAME	PRESENT	ABSENT	EXCUSE
GARY C. AKLESTAD, VICE-CH.	✓		
MIKE ANDERSON	✓		
PAT M. GOODOVER	✓		
WILLIAM HAFFERMAN	✓		
THOMAS F. KEATING	✓		
BILL NORMAN	✓		
PATRICK L. RYAN	✓		
HAROLD C. NELSON, CHAIRMAN	✓		

Each day attach to minutes.

SENATOR KEATING: The same thing does not apply to those under the Fair Labor Standards Act. If this bill were amended as proposed, it would apply only to those employees not covered by the Fair Labor Standards Act.

MS. ORR: The wrinkle is that there are situations where both the federal act and the state act may apply to large volume employers and the question is which act applies.

SENATOR AKLESTAD: Without this amended language whose property would the tips belong to?

SENATOR KEATING: With regards to banquets: The management takes 15 percent in an area where they are subject to Fair Labor Standards Act and the employer distributes 15 percent more to the employees.

SENATOR ANDERSON: We are right back to amending everything that is in there.

SENATOR RYAN: Our difficulty here is in the restaurant business- at least half of the bill's intent. We are not talking only abou waitresses.

SENATOR AKLESTAD: All he is trying to do is get a workable bill, and make sure that the banquet people will be able to divide the tips.

SENATOR GOODOVER: I think you are having a misunderstanding. Th employer does not take any of the tips. Is that correct? In many restaurants where they work together they will have a pot ar the employees divide it up. This is what we are addressing.

The Montana Restaurant Association is not in favor of the bill without the amendments. If there is a problem with the wage, let them work it out. He would still move that the Committee accept the amendments.

SENATOR AKLESTAD: Why not take out subsection 3 (b) in section 2

MS. ORR: The amendment does strike this language.

SENATOR AKLESTAD: What does the new section proposed to be added by the amendment do as compared to 3 (b)?

MS. ORR: They don't address the same thing.

SENATOR AKLESTAD: What does the new section address?

MS. ORR: Section 2, subsection 3 (b) says no employee need share his tips. The new section "3" addresses to whom the bill would apply.

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 19, 1981

The meeting of the Labor & Employment Relations Committee was called to order by Chairman Harold Nelson on March 19, 1981, in Room 404 of the State Capitol at 1:30 p.m.

ROLL CALL: All members of the Committee were present.

DISCUSSION BY THE COMMITTEE OF HOUSE BILL 557:

Staff Attorney, Katherine Orr, explained the amendments offered by Phil Strope to the Committee. The main amendments do two things: (1) The section in the bill removing any obligation of waitresses to share tips is amended out and (2) For employers subject to the federal Fair Labor Standards Act by virtue of size, the second amendment excludes application of the amendatory language in the bill to these employers.

SENATOR GOODOVER: The employers are not interested in this bill unless the amendments are included.

Senator Goodover moved that the amendments offered by Phil Strope Be Concurred In.

Ms. Orr stated that the intent of the amendment is to exclude large employers from coverage of the bill although the amendment as written and as approved by Mr. Strope may not accomplish this goal since the Fair Labor Standards Act contains a provision to the effect that state laws resulting in greater benefit to employe are not preempted by the federal act.

SENATOR ANDERSON: This bill started out to be an Act to raise the state minimum wage.

SENATOR NELSON: This was not the original bill.

SENATOR ANDERSON: Asked if all this additional language might not be amended out.

SENATOR GOODOVER: Questioned the title of the bill as amended, and asked if this was the intent of Mr. Strope's amendment.

MS. ORR: Stated that it was.

SENATOR KEATING: We are talking about the state minimum wage law but we got involved in the "tips" situation.

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date Mar. 17 1981 House Bill No. 557 Time 1:35

NAME	YES	NO
GARY C. AKLESTAD, VICE-CHAIRMAN	✓	
MIKE ANDERSON	✓	
PAT M. GOODOVER	✓	
WILLIAM HAFFERMAN		✓
THOMAS F. KEATING		✓
BILL NORMAN		✓
PATRICK L. RYAN		✓
HAROLD C. NELSON, CHAIRMAN	✓	

Marjorie Nichols
Secretary

Harold C. Nelson
Chairman

Motion: by Senator Goodover that amendment #3 offered by Phil Strope Be Concurred In.

Motion failed by a 4-4 vote.

(include enough information on motion--put with yellow copy of committee report.)

SENATOR ANDERSON: What is the difference between the bill the way it is now and by adopting the amendments proposed by Mr. S deleting all the language that has been amended?

MS. ORR: Without subsection 3 (b) the sharing of tips would b left to informal agreement.

SENATOR ANDERSON: Under which way would a good waitress make t most money?

MS. ORR: Under my calculations under the bill with the new amendments, the waitress would get $2.75 per hour plus tips und state law and $2.01 plus tips if an employer is subject to the minimum wage requirements of the federal law.

The question is how much would the employer have to pay under t federal or state act not how much of tips are included in the minimum wage. Under the federal act the employer would save 74 per hour.

SENATOR NORMAN: I move to strike the amendment language put in by the House.

It was noted there was a prior motion before the Committee.

SENATOR GOODOVER: The employers want the bill with this amendm

SENATOR NORMAN: You have a minimum wage bill. I don't think w are going to debate the minimum wage. We are going to talk abo banquets, etc. which is inappropriate.

SENATOR GOODOVER: Stated that in discussing these amendments with the Department of Labor, with some of the union people, wit some of the workers, and non-union employees, these amendments c Mr. Strope's are really not acceptable to all of these people. They feel these amendments are unnecessary. Most everybody says "let's go back to the way it was". They do not have as many problems as they will have if the amendments go in.

Senator Goodover further stated that one thing that should be taken into consideration if the amendments are not put in the bi is that the larger operations under the Fair Labor Standards Act could wind up paying on last year's business over $100,000, and these higher costs would have to be passed on to the consumer through raising the price of food.

SENATOR RYAN: If this bill had never appeared before us we woul be going on with the same minimum wage and they would still be going on with their tips.

SENATOR AKLESTAD: The difference would be that the people worki in the large establishment would be making more on tips.

ACTION ON HOUSE BILL 557:

Senator Aklestad made a substitute motion that everything be deleted out of the bill that was put in by the House in section 2.

Ms. Orr stated that would be the amendatory language in section 2.

There was a Roll Call Vote on the substitute motion, and the motion carried 5-3. This Roll Call Vote is attached.

Senator Anderson moved that House Bill 557 Be Concurred In. On a Roll Call Vote, the Committee voted 4-4 that HB 557 Be Concurred In, so HB 557 stays in Committee. This Roll Call Vote is attached.

ACTION ON HOUSE BILL 414:

Senator Anderson moved that the Committee reconsider previous action on House Bill 414. On a Roll Call Vote, the Committee voted 4-4 on the motion so HB 414 stays in Committee. This Roll Call Vote is attached.

Senator Goodover moved that HB 414 Be Not Concurred In.

Senator Nelson stated that the bill must be reconsidered before any action could take place.

Senator Keating moved that the Committee reconsider its action on House Bill 414. On a Roll Call Vote, the Committee voted 5-3 to reconsider HB 414. This Roll Call Vote is attached.

Senator Goodover moved that HB 414 Be Not Concurred In. On a Roll Call Vote, the Committee voted 5-3 that HOUSE BILL 414 BE NOT CONCURRED IN. This Roll Call Vote is attached.

Senator Goodover will carry HB 414 on the floor.

ACTION ON HOUSE JOINT RESOLUTION 25:

Staff Attorney, Katherine Orr, gave a brief resume of Child Labor Law studies in Montana. Ms. Orr concluded by stating that really no study had been completed in Montana.

Exhibits "B" and "C" were submitted to the Committee by Attorney Orr. These attachments address studies regarding child labor laws

Senator Keating moved that House Joint Resolution 25 Be Concurred In. On a voice vote the Committee voted unanimously, except for Senator Goodover who was absent for the vote, that HOUSE JOINT RESOLUTION 25 BE CONCURRED IN.

Senator Aklestad will carry HJR 25 on the floor.

ADJOURN: There being no further business, the meeting adjourned at 2:30 p.m.

Harold C. Nelson, Chairman

mln

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date Mar. 1

NAME	PRESENT	ABSENT	EXCUSED
GARY C. AKLESTAD, VICE-CH.	✓		
MIKE ANDERSON	✓		
PAT M. GOODOVER	✓		
WILLIAM HAFFERMAN	✓		
THOMAS F. KEATING	✓		
BILL NORMAN	✓		
PATRICK L. RYAN	✓		
HAROLD C. NELSON, CHAIRMAN	✓		

Each day attach to minutes.

Montana Restaurant Association

Exhibit "A" was submitted to Committee before the meeting by Carol Harrison

P.O. Box 6664
Great Falls, Mo

March 18, 1981

To: The Honorable Members of the Senate ~~Business~~ LABOR and Industry Committee:

From: Carol Harrison, Lobbyist, Montana Restaurant Association

Regarding: House Bill 557 "A BILL FOR AN ACT ENTITLED "AN ACT TO RAISE THE STATE MINIMUM WAGE: PROVIDING THAT TIPS ARE THE SOLE PROPERTY OF THE EMPLOYEE: PROHIBITING AN EMPLOYER FROM REQUIRING AN EMPLOYEE TO POOL TIPS BUT ALLOWING THE EMPLOYEE TO DO SO ON A VOLUNTARY BASIS: AMENDING SECTIONS 39-3-204 and 39-3-404, MCA."

Please allow this memorandum to serve as a position statement from the Montana Restaurant Association. It is also hopeful that it will clear up some confusion with regard to H.B. 557.

The Montana Restaurant Association does not oppose an increase in the state minimum wage.

However, section (3) (a) concerns us greatly. My understanding of this section is that it is really the heart of HB 190 (killed in House B & I Committee) which was Rep. Waldron's bill to eliminate tip credit on the state level. (Mr. Waldron was angry because his daughter worked in an establishment, Sambos, that invoked the tip credit. What he was not aware of was that Sambos fell under the Federal Minimum Wage Regulations and therefore this situation would not have been rectified by this bill).

As the situation now exists, Montana law does not address the subject of a tip credit. It does not say an employer can take a tip credit, it does not say an employer cannot take a tip credit. Therefore, some employers have followed along with the Federal regulation and do take a tip credit. The detrimental ramification to the restaurant industry of section (3) (a) in H.B. 557 is this:

Any restaurant doing business over $325,000 gross a year falls under Interstate Commerce regulations and in turn federal wage laws. The federal minimum wage law now provides for a minimum wage of $3.35/hr. with a 40% tip credit. This calculates out to $2.01 per hour plus tips. If you leave section (3) (a) in H.B. 557 the people who do not do $325,000 worth of gross will have to pay $2.50 to $2.75 an hour with no tip credit. The bottom line here is that the small restaurants that need the most help and support are the ones being penalized by this bill. The mom and pop establishments in the rural communities and the fellow just starting his own business will have to pay up to $.74 more an hour under H.B. 557. How can they compete with their bigger competitors when their labor costs are more. These people should not be penalized. They should be encouraged and supported. They create jobs and these jobs create more jobs. Out of 50 states, 49 states allow a tip credit (California

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 3/19/81 House Bill No. 557 Time 2:16

NAME	YES	NO
GARY C. AKLESTAD, VICE-CHAIRMAN	✓	
MIKE ANDERSON	✓	
PAT M. GOODOVER	✓ *	✓
WILLIAM HAFFERMAN		✓
THOMAS F. KEATING		✓
BILL NORMAN	✓	
PATRICK L. RYAN	✓	
HAROLD C. NELSON, CHAIRMAN		✓

Marjorie Berteld
Secretary

Harold C. Nelson
Chairman

Motion: Senator Anderson moved that HB 557 Be Concurred In.

*Sen. Goodover changed vote from "aye" to "nye".

Motion failed 4-4 vote.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR & EMPLOYMENT RELATIONS

Date 3/19/81 House Bill No. 557 Time 2:11

NAME	YES	NO
GARY C. AKLESTAD, VICE-CHAIRMAN	✓	
MIKE ANDERSON	✓	
PAT M. GOODOVER		✓
WILLIAM HAFFERMAN		✓
THOMAS F. KEATING	✓	
BILL NORMAN	✓	
PATRICK L. RYAN	✓	
HAROLD C. NELSON, CHAIRMAN		✓

Marjorie L. Nichols
Secretary

Harold C. Nelson
Chairman

Motion: Substitute Motion by Senator Aklestad to take out amendatory language including amendatory language in the catchline.

(include enough information on motion—put with yellow copy of committee report.)

being the exception.) Please give this your careful consideration and strike section (3) (a) of H. B. 557.

As for section (3) (b): If an employee is not required to split or share his tips with anyone else, how can a 15% gratuity be added in banquet situations? What about bus boys/girls? Most often, these are young people most happy to h the work at the minimum wage. They help the waiters/waitresses tremoundously, clearing tables, setting up, bringing the customer water, cream for his coffe They enhance the waitress/waiter's position and encourage the tip. Do they de a small part of that tip?

The "Plouffe" decision brought into play by Mr. Strope: Mr. Strope feels the ramifications of this decision would allow employees to pick and choose the mo beneficial elements out of the state and federal laws. The result of this wou be a choice of a minimum wage of $3.35 (federal law) and no tip credit (state by the employee if H. B. 557 was passed in its current form. If you take into tips earned at $3.35/hr. with no tip credit and give credence to the testimon Roger Anderson of Robbies Restaurant in Great Falls (testimony given in the Ho B & I Committee, not the Senate) who says his waitresses earn an average of $2 day in tips, you will find this calculates out to apporoximately $6.00 per hr. for waitresses, waiters-- a considerably higher wage than many employees recei Is this the intent of a minimum wage bill? Those representing Labor state the "Plouffe" decision does not have any impact on H. B. 557. If this is indeed t case, what harm can there be in inserting language that specifically spells ou an employee cannot pick and choose out of each law? Why would Labor protest s an amendment as amendment #4 if they believed what they are saying?

The Montana Restaurant Association supports Mr. Strope's proposed amendments i their entirety and respectfully requests that you send this bill out of committee in its amended form and support it on the floor of the Senate.